

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

S.J. AMOROSO CONSTRUCTION CO.,
INC.,

Plaintiff,

No. C 09-4197 PJH

v.

**ORDER GRANTING MOTION TO FILE
AN AMENDED ANSWER AND
AMENDED COUNTERCLAIM**

LIBERTY SURPLUS INSURANCE
CORPORATION and DOES 1 through
50,

Defendants.

The motion of defendant Liberty Surplus Insurance Corporation ("LSIC") for an order granting leave to amend its answer and counterclaim pursuant to Federal Rule of Civil Procedure 15(a)(2) came on for hearing on June 9, 2010. LSIC appeared by its counsel Jay Christofferson, and plaintiff S.J. Amoroso Construction Co., Inc. ("SJA") appeared by its counsel Jon Brick. Having carefully reviewed the parties' papers and considered the arguments of counsel and the relevant legal authority, and good cause appearing, the court hereby rules as follows for the reasons stated at the hearing and summarized below.

DISCUSSION

Courts should "freely give" leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). Courts generally examine and weigh four factors to determine whether it would be inappropriate to grant leave to amend: bad faith, undue delay, prejudice to the opposing party, and futility. Foman v. Davis, 371 U.S. 178, 182 (1962).

There is little indication that any of these factors are present in this case. Because this case is still in the early stages of litigation and because the discovery

1 cutoff date is more than a year away, there has been no undue delay in bringing the
2 motion and no prejudice will result to SJA if the motion is granted. There is also no
3 indication of bad faith on the part of LSIC. While SJA argues that the proposed
4 amendments would be futile because of its defenses of waiver and estoppel, the court
5 finds that examining the merits of such defenses is better suited for a motion to dismiss
6 or for summary judgment rather than a motion for leave to amend. Additionally, there
7 are factual disputes bearing on the viability of these defenses, which require at
8 minimum, a fully developed evidentiary record.

9 **CONCLUSION**

10 In accordance with the foregoing, the motion for leave to amend is GRANTED.

11 **IT IS SO ORDERED**

12 Dated: June 10, 2010



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PHYLLIS J. HAMILTON
United States District Judge